



STATE OF WISCONSIN Division of Hearings and Appeals

In the Matter of

Office of the Inspector General, Petitioner

vs.

██████████, Respondent

DECISION

Case #: FOF - 203757

Pursuant to petition filed November 11, 2021, under Wis. Admin. Code §HA 3.03, and 7 C.F.R. § 273.16, to review a decision by the Office of the Inspector General to disqualify ██████████ from receiving FoodShare benefits (FS) for a period of one year, a hearing was held on Thursday, January 6, 2022 at 09:30 AM at Milwaukee, Wisconsin.

The issue for determination is whether the respondent committed an Intentional Program Violation (IPV).

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

Office of the Inspector General
Department of Health Services - OIG
PO Box 309
Madison, WI 53701

Respondent:

██████████
██████████
██████████

ADMINISTRATIVE LAW JUDGE:

Beth Whitaker
Division of Hearings and Appeals

FINDINGS OF FACT

1. The respondent (CARES # ██████████) is a resident of Milwaukee County who received FS benefits in Adams County beginning in October 1, 2013 and thereafter in Milwaukee County.
2. Respondent and ██████████ were married in 2015.

3. On August 19, 2016, respondent completed an Access online FS renewal, reporting a household size if four comprised of her and 3 children and identifying herself as “single/never married.”
4. On or about September 29, 2016, the agency mailed to respondent an Enrollment and Benefits Booklet (EBB) providing information about FS fraud and intentional program violations (IPVs) and FS rules.
5. On May 8, 2017, respondent reported that her self-employment business as a caterer ended November ,1, 2016.
6. Respondent continued operating her self-employment business selling soap in 2017, 2018 and 2021. (Ex. 5d, e and f).
7. On October 24, 2017 and October 27, 2018 respondent submitted six month report forms (SMRFs) indicating no self-employment income and no change in family composition.
8. On December 16, 2019, respondent submitted an Access online health care renewal application and for the first time reported that she was married.
9. On January 13, 2020, respondent provided to the agency a notarized statement that she and [REDACTED] were married but did not state the place or date of the marriage. (Ex. 6a)
10. On March 17, 2020, the respondent provided a written statement to the agency stating that [REDACTED] did not reside with her.
11. On September 14, 2020, respondent reported to the child support agency that she and [REDACTED] were an intact family. (Ex. 6c)
12. On November 2, 2020, respondent filed a FS application and stated that she had no income and her husband was out of the home. (Ex. 4s)
13. [REDACTED] provided a written room rental agreement dated January 6, 2021 as evidence of his residence at [REDACTED]. (Ex. 6e)
14. On October 6, 2021, [REDACTED] stated in an email to the agency “I have to correct the information I have given you” and updated his address to [REDACTED], which is respondent’s address. (Ex. 6f)
15. On January 21, 2022, the petitioner prepared an Administrative Disqualification Hearing Notice alleging that petitioner failed to report that she was married to [REDACTED] [REDACTED].

DISCUSSION

An intentional program violation of the FoodShare program occurs when a recipient intentionally does the following:

1. makes a false or misleading statement, or misrepresents, conceals or withholds facts;
or
2. commits any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any Wisconsin statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of FoodShare benefits or QUEST cards.

FoodShare Wisconsin Handbook, § 3.14.1; *see also* 7 C.F.R. § 273.16(c) and Wis. Stat. §§ 946.92(2).

An intentional program violation can be proven by a court order, a diversion agreement entered into with the local district attorney, a waiver of a right to a hearing, or an administrative disqualification hearing, *FoodShare Wisconsin Handbook*, § 3.14.1. The petitioner can disqualify only the individual found to have committed the intentional violation; it cannot disqualify the entire household. Those disqualified on grounds involving the improper transfer of FS benefits are ineligible to participate in the FoodShare program for one year for the first violation, two years for the second violation, and permanently for the third violation. Although other family members cannot be disqualified, their monthly allotments will be reduced unless they agree to make restitution within 30 days of the date that the FS program mails a written demand letter. 7 C.F.R. § 273.16(b).

In order for the petitioner to establish that an FS recipient has committed an IPV, it has the burden to prove two separate elements by clear and convincing evidence. The recipient must have: 1) committed; and 2) intended to commit a program violation per 7 C.F.R. § 273.16(e)(6). In *Kuehn v. Kuehn*, 11 Wis.2d 15 (1959), the court held that:

Defined in terms of quantity of proof, reasonable certitude or reasonable certainty in ordinary civil cases may be attained by or be based on a mere or fair preponderance of the evidence. Such certainty need not necessarily exclude the probability that the contrary conclusion may be true. In fraud cases it has been stated the preponderance of the evidence should be clear and satisfactory to indicate or sustain a greater degree of certitude. Such degree of certitude has also been defined as being produced by clear, satisfactory, and convincing evidence. Such evidence, however, need not eliminate a reasonable doubt that the alternative or opposite conclusion may be true. ...

Kuehn, 11 Wis.2d at 26.

Wisconsin Jury Instruction – Civil 205 is also instructive. It provides:

Clear, satisfactory and convincing evidence is evidence which when weighed against that opposed to it clearly has more convincing power. It is evidence which satisfies and convinces you that “yes” should be the answer because of its greater weight and clear convincing power. “Reasonable certainty” means that you are persuaded based upon a rational consideration of the evidence. Absolute certainty is not required, but a guess is not enough to meet the burden of proof. This burden of proof is known as the “middle burden.” The evidence required to meet this burden of proof must be more convincing than merely the greater weight of the credible evidence but may be less than beyond a reasonable doubt.

Further, the *McCormick* treatise states that “it has been persuasively suggested that [the clear and convincing evidence standard of proof] could be more simply and intelligibly translated to the jury if they were instructed that they must be persuaded that the truth of the contention is highly probable.” 2 *McCormick on Evidence* § 340 (John W. Strong gen. ed., 4th ed. 1992).

Thus, in order to find that an IPV was committed, the trier of fact must derive from the evidence a firm conviction as to the existence of each of the two elements even though there may be a reasonable doubt as to their existence.

In order to prove the second element, i.e., intention, there must be clear and convincing evidence that the FS recipient intended to commit the IPV. The question of intent is generally one to be determined by the trier of fact. *State v. Lossman*, 118 Wis.2d 526 (1984). There is a general rule that a person is presumed to know and intend the probable and natural consequences of his or her own voluntary words or acts. See, *John F. Jelke Co. v. Beck*, 208 Wis. 650 (1932); 31A C.J.S. Evidence §131. Intention is a subjective state of mind to be determined upon all the facts. *Lecus v. American Mut. Ins. Co. of Boston*, 81 Wis.2d 183 (1977). Thus, there must be clear and convincing evidence that the FS recipient knew that the act or omission was a violation of the FS Program but committed the violation anyway.

The agency alleges that respondent committed an intentional program violation when she failed to report self-employment income marital status and accurate household composition in FS applications and renewals. This is in violation of the program rule prohibiting making false or misleading statements or misrepresenting, concealing or withholding facts in order to receive or continue to receive FS benefits.

Respondent does not dispute that she intentionally reported that [REDACTED] [REDACTED] did not live with her and was not married to her. She maintains that in fact, he did not live with her and, for that reason, she was justified in saying they were not married to avoid confusion. Specifically, she and [REDACTED] testified at hearing that she indicated single because the application forms gave no option to say she was married but still head of household with her husband living elsewhere. This is not a persuasive argument in her defense, rather, it is a clear admission that she

intentionally reported her marital status incorrectly to avoid any “confusion” that would prevent her from receiving benefits.

██████ testified at some length at hearing. His testimony in its entirety was self-serving, implausible and inconsistent with volumes of reliable documentary evidence in this record. Respondent was present at hearing but initially sought to have ██████ speak for her by reading a statement she prepared. Eventually, she read her own statement. Her testimony, like ██████’s, was entirely lacking credibility.

Respondent submitted some correspondence addressed to ██████ at ██████ N. 41 Street, dated September 9, 2013 and September 2018 and August 10, 2021. This evidence was considered but having bills or statements sent to a local address owned by family members is woefully insufficient evidence of residence in these circumstances.

The overwhelming weight of credible evidence supports a conclusion that ██████ and respondent were married since, at the latest, 2015 and resided together at all times during their marriage, throughout the multiple year period that is the subject of this dispute. Respondent and ██████ consistently represented themselves as an intact married couple in frequent social medial posts. ██████ admitted that they were married since 2015 and disavowed the rental agreement for the claimed 41st Street address when confronted with evidence that the agreement was fraudulent and acknowledged to the agency on October 6, 2021, in writing, that he lived at respondent’s address. He did not qualify the correction by claiming that he had not lived there at any point in the past.

Based upon the record before me, I find that the petitioner has established by clear and convincing evidence that the respondent intentionally violated FS program rules, and that this violation was the first such violation committed by the respondent. Therefore, the petitioner correctly seeks to disqualify the respondent from the FS program for one year.

CONCLUSIONS OF LAW

1. The respondent violated, and intended to violate, the FS program rule specifying that she is required to accurately report marriage status and family composition.
2. The violation specified in Conclusion of Law No. 1 is the first such violation committed by the respondent.

NOW, THEREFORE, it is

ORDERED

That the petitioner’s determination is sustained, and that the petitioner may make a finding that the respondent committed a first IPV of the FoodShare program and disqualify the respondent from the program for one year, effective the first month following the date of receipt of this decision.

REQUEST FOR A REHEARING ON GROUNDS OF GOOD CAUSE FOR FAILURE TO APPEAR

In instances where the good cause for failure to appear is based upon a showing of non-receipt of the hearing notice, the respondent has 30 days after the date of the written notice of the hearing decision to claim good cause for failure to appear. See 7 C.F.R. sec. 273.16(e)(4). Such a claim should be made in writing to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, WI 53703, **and** on those identified in this decision as “PARTIES IN

INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing request (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 24th day of January, 2022



\sBeth Whitaker
Administrative Law Judge
Division of Hearings and Appeals

c: Office of the Inspector General - email
Public Assistance Collection Unit - email
Division of Health Care Access and Accountability - email
[REDACTED] - email



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 24, 2022.

Office of the Inspector General
Public Assistance Collection Unit
Division of Health Care Access and Accountability
[REDACTED]